



Department of Community Development

Request for Qualifications (RFQ)

Date of Issue: **January 9, 2012**

Due Date: **February 7, 2012**

Southside Revitalization Project

**Through this RFQ, the City of Durham is soliciting
Statements of Qualifications from market research and/or
real estate firms to provide real estate advisory services to guide
homeownership construction and marketing in the Southside neighborhood.**

Questions about this RFQ should be directed to:

Project Manager	Larry M. Jarvis, AICP
Title	Assistant Director
Department	Department of Community Development
Address	807 E. Main Street, Suite 2-200, Durham, NC 27701
Telephone	919-560-4570, ext. 22273
Email	Larry.Jarvis@durhamnc.gov

Selected Contents

DESCRIPTION OF PROJECT AND NATURE OF RFQ	
Project.....	3
Scope of Work.....	5
Compensation Amount and Schedule.....	6
Definitions in this RFQ.....	6
Contract.....	6
Trade Secrets and Confidentiality.....	6
Bonds.....	6
Insurance.....	6
Discretion of the City.....	7
SCHEDULE	
Schedule.....	8
Keeping Proposals Open.....	8
Deadline to Submit Proposals.....	8
GETTING MORE INFORMATION ON THE PROJECT AND RFQ PROCESS	
Questions.....	8
Pre-submittal conferences, meetings, and site visits.....	8
Updates and revisions to RFQ.....	8
EVALUATION CRITERIA	
Evaluation Criteria.....	8
CONTENTS OF STATEMENT OF QUALIFICATIONS	
Contents of Statement.....	10
SDBE.....	10
COVER LETTER WITH STATEMENT	
Cover letter.....	11
Addendums.....	11
HOW TO SUBMIT A STATEMENT OF QUALIFICATIONS	
How to submit a statement of qualifications.....	12
Format.....	12
Alternative Submittals.....	12
Candidate to Bear Expense; No Claims against City.....	12
Privilege License.....	12
Notice Under the Americans with Disabilities Act (ADA).....	12
Appendix A – Small and Disadvantaged Business Enterprise (SDBE) forms.....	14
Appendix B – Sample Contract.....	31

Request for Qualifications (RFQ) for Real Estate Advisory Services: A major component of the Southside neighborhood revitalization project is the construction and sale of new homeownership units to a broad range of homebuyers, including prospective buyers with incomes sufficient to have geographic choice. Advisory services sought include, but are not limited to the timing of home construction given existing inventory and other economic conditions, the optimal number of speculative starts, establishing sales prices and incentives that would maximize sales volume.

10. Date of RFQ: The date of issuance is January 9, 2012 and the due date for submitting statements of qualification is February 7, 2012.

20. Project Manager and Contact with City; Questions about this RFQ. Direct questions and concerns to:

Att: Larry M. Jarvis, AICP, Assistant Director
Department of Community Development
807 E. Main Street, Suite 2-200
Durham, NC 27701

Phone: (919) 560-4570, ext. 22273

Fax: (919) 560-4570

Email: Larry.Jarvis@durhamnc.gov

DESCRIPTION OF PROJECT AND NATURE OF RFQ

30. Project. The Southside project area consists of approximately 125 acres located on the southern edge of downtown Durham and just north of North Carolina Central University (NCCU). Boundaries of the project area are generally Lakewood Avenue on the north, the American Tobacco Trail on the west, Umstead Street on the south and Fayetteville Street on the east.

After years of economic disinvestment, the area contains the highest concentrations of vacant properties of any Durham neighborhood and one of the lowest rates of homeownership. Just over 28% of the 451 residential parcels in the area are vacant lots and approximately 24% of the existing residential units are vacant. Within the entire area, there are fewer than 30 owner-occupied dwellings.

Despite the historic disinvestment that has occurred, Southside does have certain strategic advantages over other challenged Durham neighborhoods. First, is its proximity to downtown, Forest Hills and other stable neighborhoods, NCCU and the Durham freeway. Secondly, the area is relatively small, compact and manageable.

The objective of the City's revitalization strategy for Southside is to attract long term, private investment. Within the project area, there are significant redevelopment opportunities over the coming decades. Accordingly, that strategy consists of substantial and focused investments to create new high quality rental and homeownership units to form a critical mass that such private investment can build upon. The City's hope is that investment on the south side of the Durham freeway will yield similar returns as the decision to build the Durham Bulls Athletic Park on the north side of the freeway.

To implement the strategy, the City has partnered with the nationally recognized development firm of McCormack Baron Salazar (MBS) to build and manage more than 200 mixed-income rental units over the next six to seven years on portions of the Rolling Hills site and with the Center for Community Self-Help (Self-Help) to coordinate the development of new homeownership units on the west side of Roxboro Street. Self-Help owns roughly 100 properties in that location which are available for redevelopment.

The first phase of rental development by MBS consists of 119 rental units and 13 “live-work” units in twelve buildings on a 6-acre portion of the Rolling Hills site at Lakewood Avenue and Roxboro Street. Eighty of the rental units will be income-restricted to households with incomes at or below 60% of the area median and 39 will be market rate. The live-work units have been designed to initially function as residential space within a future commercial envelope.

MBS is a national leader in central city neighborhood revitalization projects using a mixed-income rental model and architectural designs and quality standards which equal or exceed those found in most market rate developments. Additionally, MBS provides long-term management of the properties that it develops. From a neighborhood revitalization perspective, the MBS strategy is to provide highly desirable and safe rental opportunities in a distressed neighborhood as a tool to restore confidence in the future of the neighborhood and thus, to attract other private investment.

Grading of the Rolling Hills site for Phase I will begin in early 2012 with the construction of the infrastructure to begin later in the spring. Vertical construction of the residential buildings is expected to begin in June 2012 with a projected fall 2013 completion date. Building types range from a three-unit townhouse style building to a 4-story elevator building containing 38 units. The development will be served by a pool, community/meeting rooms, play grounds and extensive landscaping. The most prominent feature is a planned storm water/amenity pond at the corner of Lakewood and Roxboro which will incorporate terraced architectural walls and one or more fountains.

A second phase of mixed-income rental development, also on the Rolling Hills site, is planned by MBS with construction to begin most likely in 2015. The second phase will consist of an additional 79 units. Three other development blocks are located on the Rolling Hills site which can accommodate 100+ future units which may be rental or homeownership.

Concurrent with the construction of the first rental phase, the City, Self-Help and other partners intend to create at least 45 new homeownership units in Southside on the west side of Roxboro Street. As with the rental units, achieving a mixture of incomes, including households above the HUD definition of low-to-moderate income, is a specific objective. The firm of O’Brien Architecture has designed eight house plans for the area and any non-profit or for profit builder that constructs homes with City financial assistance must select from among those approved designs. Design guidelines governing interior finishes and materials such as hardwood floors and solid surface kitchen countertops are also in place.

Property consisting of approximately three acres has also been assembled at Roxboro Street and Piedmont Avenue which would lend itself to townhouse development. The preparation of conceptual townhouse development scenarios is pending and will include both front-loaded garage and rear-loaded garage layouts.

Final construction cost estimates for the single-family detached units are being prepared. Once those costs are known, a preliminary program for homebuyer assistance and buyer incentives will be developed. The City and its partners are already fully aware that total unit cost (land acquisition and holding costs, hard cost, profit and overhead, etc.) will greatly exceed the appraised or market value of the unit given the historic disinvestment in the neighborhood. A major objective therefore, is to see those values increase as quickly as possible. To help

achieve that objective, subsidies or incentives to the buyer will be used to the extent possible as opposed to subsidies to the builder. As an example, given a home with construction costs (inclusive of profit and overhead) of \$150,000, the increasing values objective is better served by providing the buyer a \$25,000 forgivable second mortgage than it would be by providing the builder with a \$25,000 construction cost write-down so that the home could be offered for sale at \$125,000.

Maps, phasing plans and building plans for the first phase of mixed-income rental and the single-family homeownership units are included in Attachment A.

40. Scope of Work. The City is soliciting real estate advisory services to guide the homeownership construction and marketing in the Southside neighborhood. The scope includes specific tasks and deliverables and advisory services as requested and needed during the term of the contract.

Phase One Tasks/Deliverables

- Review written materials and reports to gain familiarity with all elements of the Southside project and the City's objectives in undertaking the project. Fully understanding the City's objectives of attracting long term, profit-motivated private investment and new homebuyers who have geographic choice is particularly important.
- Review sales between \$100,000 and \$200,000 for homes not more than 20 years old in the Durham market over the past year. Summarize sales activity by price band and location. Identify home characteristics or features most frequently common within bands. To the extent information is available, identify most prevalent market segments (i.e., singles, families, empty-nesters, etc.) within bands.
- Review existing home inventory offered for sale in the Durham market within the \$100,000 to \$200,000 range. Determine supply/demand gaps, if any.
- Review and critique single-family detached house plans prepared by O'Brien Architecture using projects offered by production builders targeting first time and move-up buyers as benchmarks. Critique plans as options for empty-nester households seeking to downsize.
- Based on the analysis of sales over the past year, the review of existing inventory and the comparative analysis of products offered by production builders, review the proposed pricing and incentives package for the Southside homeownership initiative and suggest adjustments or enhancements that would maximize sales volume.
- Based on existing inventory and other factors, project the most advantageous timeframe for beginning homeownership development in the Southside neighborhood. Suggest the minimum number of speculative starts. Suggest the maximum number of speculative starts. Forecast annual absorption and expected days on the market for speculative building. Estimate Southside capture rate as a percentage of the total Durham market.

Phase Two Tasks/Deliverables

- Review townhouse sales in both the Durham and Wake County markets (sales period to be determined) to identify attributes most common to the best selling communities. The analysis should identify best selling locations, price points, architectural styles or design features, etc. In assessing design features, the treatment of decks (exposed vs. semi-private) and/or patios should be included. Additionally, the analysis should include parking provisions most in demand, i.e., surface parking, one-car or two-car garages (front loaded and rear loaded).
- Analyze site in Southside as a competitive location for townhouse development given the inclusion of those historic attributes most closely correlated with high sales volumes.
- Provide guidance as to the advantageous timeframe for townhouse development in Southside (if applicable) and forecast annual absorption.

Advisory Services

- During the contract term (duration to be determined), provide consultation on an hourly basis relative to market developments that affect Southside homeownership sales.
- Provide consultation on an hourly basis as requested relative to the sale of homeownership units in Southwest Central or Northeast Central Durham.
- Other real estate advisory services as needed.

50. Compensation Amount and Schedule. The City intends to enter into negotiations with the highest ranked respondent to establish compensation for the specific tasks and deliverables outlined above. For purposes of this submittal, respondents should indicate an hourly rate, inclusive of profit and overhead, for all personnel to be involved in this project. Should negotiations with the highest ranked responder fail to result in compensation acceptable to both parties, the City reserves the right to enter into negotiations with the next highest ranked respondent.

With respect to the Phase One Tasks/Deliverables, time is of the essence. While also subject to negotiation, the preferred schedule for the completion of said tasks/deliverables is six to eight weeks following contract execution.

The notice to proceed with the Phase Two Tasks/Deliverables will not be issued until those associated with Phase One have been satisfactorily completed. Tentatively, the completion for Phase Two is projected to sixteen to twenty weeks following contract execution.

60. Definitions in this RFQ: City, RFQ, Statement of Qualifications (SOQ), Candidate, Contractor, Should. Unless the context indicates otherwise – (a) The expressions “RFQ,” “this RFQ,” and “the RFQ” refer to this document as it may be amended or updated. (b) “City” and “city” mean the City of Durham. (c) The “Statement of Qualifications (SOQ)” is the response of a person, firm, or corporation proposing to provide the services sought by this RFQ. (d) The word “Candidate” or “candidate” is the person, firm, or corporation that submits an SOQ or that is considering submitting an SOQ. (e) The word “Contractor” or “contractor” is the person, firm, or corporation with which the City enters into a contract to provide the services sought by this RFQ.

70. Contract. The City anticipates that the conclusion of the RFQ process will be a contract between the City and the successful candidate under which the successful candidate will provide the services generally described in this RFQ. It is the City’s intention to use the contract that is attached as Appendix B, modified and filled in to reflect the RFQ. If a candidate objects to any of the contract provisions, it should state the objections in its SOQ.

80. Trade Secrets and Confidentiality. NA.

90. Bonds. No fidelity bond, performance bond or payment bond is required for this contract.

100. Insurance. Contractor shall purchase and maintain insurance coverage for not less than the following:

Commercial General Liability, covering:

- Premises/operations
- Products/completed operations (two years minimum, from project completion)
- Broad form property damage
- Contractual liability
- Independent contractors, if any are used in the performance of this contract

- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- Combined single limit not less than \$1,000,000 per occurrence, with an annual aggregate on not less than \$2,000,000.

Commercial Auto Liability, covering:

- Symbol 1, all vehicles
- Combined single limit of \$1,000,000
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the AL section of the certificate, in lieu of an original endorsement)

Professional Liability, covering:

- Covering claims arising out of professional advisement / consultation services performed in connection with this contract
- Self-insured retentions/deductibles in excess of \$25,000 must be approved by the City Finance Director
- Combined single limit not less than \$1,000,000 per occurrence; if coverage is only available on claims made basis, then additional coverage requirements may apply, subject to review of City Finance Director

Workers' Compensation Insurance, covering:

- Statutory benefits;
- Covering employees; covering owners partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)
- Employers' liability, \$1,000,000
- Waiver of subrogation in favor of the City of Durham

Insurance shall be provided by:

- Companies authorized to do business in the State of North Carolina
- Companies with Best rating of A-, VII or better.

Insurance shall be evidenced by a certificate:

- Providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- Certificates shall be addressed to:
City of Durham, North Carolina
Department of Community Development
807 E. Main Street, Suite 2-200
Durham, NC 27701
- The insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.

110. Discretion of the City.

- A. The City of Durham reserves the right to reject any or all SOQs.
- B. NOTWITHSTANDING anything to the contrary in this document or in any addendums to this document, unless the contrary provision refers specifically to this provision, the City reserves the right (i) to negotiate changes of any nature with any candidate with respect to any term, condition, or provision in this document and/or in any SOQs, whether or not something is stated to be mandatory and whether or not it is said that a proposal will be rejected if certain information or documentation is not submitted with it, and (ii) to enter into an agreement for some or all of the work with one or more persons, firms, or corporations

that do not submit SOQs. For example, all deadlines are for the administrative convenience or needs of the City and may be waived by the City in its discretion. This subparagraph B applies to the entire RFQ, including the SDBE portions.

C. Where the City asks or tells candidates to do stated things, such as that an SOQ should follow a stated format or that the candidate should do stated things in seeking the contract, the City may reject an SOQ because it does not comply with those requests, so the candidate is adding to its risk of rejection by non-compliance. Still, the City may, in its discretion, waive non-compliance. This subsection (C) does not limit subsections (A) and (B).

D. Of course, once a contract is signed, the parties to the contract may enforce the contract according to its terms as allowed by applicable law.

SCHEDULE

120. Schedule. The work schedule set out herein represents the City's best estimate of the schedule that will be followed. If a component of the schedule, such as the opening date is delayed, the overall schedule will be adjusted accordingly.

Tentatively, it is anticipated that the evaluation committee will complete its review within 10 days of submittal and that negotiations with the highest ranked candidate will commence immediately. The target date for having an executed contract in place is late February to early March 2012.

130. Keeping SOQs Open. NA.

140. Deadline to Submit SOQs. Candidates should see that their SOQs are received at the following address by February 7, 2012 at 4:00 PM: 807 E. Main Street, Suite 2-200, Durham, NC 27701.

GETTING MORE INFORMATION ON THE PROJECT AND RFQ PROCESS

150. Questions. Questions about the RFQ and the RFQ process should be submitted to the project manager identified at the beginning of this RFQ.

160. Pre-submittal conferences, meetings, and site visits. No formal pre-submittal conferences, meetings or site visits will be held. However, candidates can request a site visit to the project area by contacting the project manager.

170. Updates and revisions to RFQ. This RFQ and addendums are normally posted on the City's website, on the Purchasing Division's webpage posted below. Check that webpage to see that you have received all addenda. <http://durhamnc.gov/ich/as/fin/Pages/bids.aspx>

EVALUATION CRITERIA

180. Evaluation Criteria. If an award is made, it is expected that the City's award will be to the candidate that agrees to meet the needs of the City. A number of relevant matters will be considered as outlined below.

190. Understanding of the Project— 20 points

SOQs will be evaluated against the questions set out below.

- (a) How well has the candidate demonstrated a thorough understanding of the purpose and scope of the project?
- (b) How well has the candidate identified issues and potential problems related to the project?
- (c) How well has the candidate demonstrated that it understands the deliverables the City expects it to provide?
- (d) How well has the candidate demonstrated that it understands the City's schedule and can meet it?
- (e) Adherence to the City's SDBE program.

200. Methodology Used for the Project— 20 points

SOQs will be evaluated against the questions set out below.

- (a) How well does the methodology depict a logical approach to fulfilling the requirements of the RFQ?
- (b) How well does the methodology match and contribute to achieving the objectives set out in the RFQ?
- (c) How well does the methodology interface with the schedule in the RFQ?

210. Management Plan for the Project— 20 points

SOQs will be evaluated against the questions set out below.

- (a) How well does the management plan support all of the project requirements and logically lead to the deliverables required in the RFQ?
- (b) How well is accountability completely and clearly defined?
- (c) Is the organization of the project team clear?
- (d) How well does the management plan illustrate the lines of authority and communication?
- (e) To what extent does the candidate already have the hardware, equipment, and licenses necessary to perform the contract?
- (f) Does it appear that the candidate can meet the schedule set out in the RFQ?
- (g) Has the candidate offered alternate deliverables and gone beyond the minimum tasks necessary to meet the objectives of the RFQ?
- (h) How well have potential problems been identified?
- (i) Is the SOQ responsive to all material requirements in the RFQ?

220. Experience and Qualifications— 40 points

SOQs will be evaluated against the questions set out below.

Questions regarding the personnel.

- (a) Do the individuals assigned to the project have experience on similar projects?
- (b) Are resumes complete and do they demonstrate backgrounds that are desirable for individuals engaged in the work the project requires?
- (c) How extensive are the applicable education and experience of the personnel designated to work on the project?
- (d) How knowledgeable are the candidate's personnel of the local area and how many individuals have worked in the area previously?

Questions regarding the candidate:

- (e) How well has the candidate demonstrated experience in providing real estate advisory services to guide the successful completion of similar projects?
- (f) Has the candidate provided references with contact information?

CONTENTS OF SOQ

240. Contents of SOQ

The SOQ should include sections, numbered as indicated below. In preparing the SOQ, candidates should refer to the evaluation criteria stated above.

1. **Contact information.** Include the candidate's name and address, and the contact information (name, mailing address, email address, fax number, and telephone number) of the person whom the City should contact regarding the proposal.
2. **Legal Status of the Candidate and Signers.** State the full, exact name of the candidate. State whether the candidate is an individual, corporation, limited partnership, general partnership, limited liability company, professional corporation, professional association, etc. If it is anything other than an individual or a general partnership, specify the State under which the entity is organized. If the State under which the entity is organized is not North Carolina, specify whether the candidate has received a certificate of authority from the N. C. Secretary of State to transact business in North Carolina. State whether the entity is in existence at the time the proposal is submitted, and if not, whether and when the candidate intends to officially form the entity. State the names and titles of the individuals who will sign the contract with the City.
3. **Qualifications, References, and Licenses.** This part should include the candidate's experience on similar projects and include references and how to contact them. List the candidate's current licenses, if applicable, that are pertinent to this project.
4. **Project Team and Subcontracting.** State the names and qualifications of the individuals who will have responsibility for this project, including any subcontractors. Include resumes for all professionals who will comprise the project team.
5. **Project Understanding, Management Plan and Methodology.** State your understanding of the project and the requested tasks and deliverables. Indicate how the project team will be organized and estimate the approximate percentage of time attributable to each team member. Describe the methodology to be used in completing the tasks and deliverables and the approximate schedule for completing same from the time of contract execution.
6. **Hourly Rates.** Indicate the hourly billing rate, inclusive of overhead and profit, for each team member.
7. **Assumptions regarding City of Durham Actions and Participation.** NA.
8. **Equal Business Opportunity Program.** It is the policy of the City to provide equal opportunities for City contracting for small firms owned by socially and economically disadvantaged persons doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct present effects of past discrimination and to resolve complaints of such discrimination. The policy applies to all professional services categories.

While there are no SDBE participation goals for this project, in accordance with the Ordinance, all contractors are required to provide information requested in the "SDBE

Professional Services Forms” package, which has been included with this Request for Qualifications in Appendix A. **Proposals that do not contain the appropriate, completed “Professional Services Forms” may be deemed non-responsive and ineligible for consideration.** The “Declaration of Performance,” “Participation Documentation,” Managerial Profile,” “Equal Opportunity Statement” and the “Employee Breakdown” documents are required of all proposers. In lieu of “Employee Breakdown,” contractors may submit a copy of the current EEO-1 form (corporate basis). Other forms in the package should be used as needed.

The Department of Equal Opportunity/Equity Assurance is responsible for the Equal Business Opportunity Program. All questions about “SDBE Professional Services Forms” should be referred to Deborah Giles or other department staff at (919) 560-4180.

9. Conflict of Interest. If the candidate has any grounds to believe there could be a conflict of interest, such as that a City employee who is involved in awarding the contract has a connection with the candidate, please explain.

10. Non-collusion. This RFQ constitutes an invitation to bid or propose. Sign the following and include it with your response:

The City of Durham prohibits collusion, which is defined as a secret agreement for a deceitful or fraudulent purpose.

I, _____ affirm that I have not engaged in collusion with any City employee(s), other person, corporations or firms relating to this submittal. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

Signature: _____

COVER LETTER WITH SOQ

250. Cover letter. The SOQ should contain a cover letter, signed by a principal of the candidate. The cover letter should contain the following statements:

“The undersigned, whose title and position with the candidate are stated next to or beneath his or her signature, has the authority to submit this SOQ (including this cover letter) on behalf of the candidate in response to the City of Durham’s Request for Qualifications. Our SOQ accepts the terms and conditions stated in the RFQ, including the description of services to be performed and the provisions of the contract to be signed.”

The cover letter should contain the paragraph:

“The candidate is not submitting any trade secrets to the City in connection with this proposal or the contract; if the contract is awarded to the candidate, the candidate will not submit any trade secrets to the City in connection with this proposal or the contract. The candidate acknowledges that the City will rely on the preceding sentence.”

260. Addendums. The cover letter should list the last addendum that the City issues for this RFQ, with a statement such as *The undersigned candidate has read all the addendums issued*

by the City for this RFQ, through and including Addendum No. _____. In that blank the candidate should list the number of the last addendum.

HOW TO SUBMIT A SOQ

270. How to submit a SOQ.

Candidates should submit their SOQ in a sealed envelope. The envelope should be addressed for delivery to the Project Manager at the address shown in the "Project Manager and Contact with City" section at the beginning of this RFQ.

Write the following prominently on the outside of the envelope: "Statement of Qualifications for Southside Real Estate Advisory Services"

SOQs are to be received no later than 4 PM, February 7, 2012. Submittals should not be made by email or fax.

280. Format. No format is specified. One original and five copies of the SOQ should be submitted.

290. Alternative Proposals. NA

300. Candidate to Bear Expense; No Claims against City. No candidate will have any claims or rights against the City arising out of the participation by a candidate in the SOQ process. No candidate will have any claims or rights against the City for the City's failure to award a contract to it or for awarding a contract to another person, firm, or corporation, regardless of whether the other person, firm, or corporation participated in the RFQ process or did not submit a SOQ that complied with the RFQ. A notice of award will not constitute acceptance by the City; the City's only method of acceptance is the City's execution of a formal contract in accordance with law.

310. Privilege License. The City's practice is that if a City privilege license is required to perform the work under the contract, the candidate needs to obtain the license before the City will sign the contract. For information on this license, call (919) 560-4700 or see http://www.durhamnc.gov/departments/finance/business_license.cfm. A current license is not required to submit the SOQ.

320. Notice Under the Americans with Disabilities Act (ADA). The City of Durham will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Anyone who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in the City program, service, or activity, should contact Ms. Stacey Poston, ADA Coordinator, voice 919-560-4197, fax 560-4196, TTY 919-560-1200, or Stacey.Poston@durhamnc.gov, as soon as possible but no later than 48 hours before the scheduled event.

Appendix A

CITY OF DURHAM

SMALL DISADVANTAGED BUSINESS ENTERPRISE

PROFESSIONAL SERVICES FORM



Equal Opportunity/ Equity Assurance Department

Mailing Address:

101 City Hall Plaza
Durham, North Carolina 27701

Street Address:

302 E. Pettigrew Street, Suite C-180
Durham, North Carolina 27701

Phone: (919) 560-4180

Facsimile: (919) 560-4513

CITY OF DURHAM EQUAL BUSINESS OPPORTUNITY PROGRAM

Policy Statement

It is the policy of the City to provide equal opportunities for City contracting to small firms owned by socially and economically disadvantaged persons doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct the present effects of past discrimination and to resolve complaints of discrimination.

Goals

To increase the dollar value of all City contracts for goods and services awarded to small disadvantaged business enterprises, it is a desire of the City that the contractor will voluntarily undertake efforts to increase the participation of socially and economically disadvantaged individuals at higher skill and responsibility levels within non-minority firms engaged in contracting and subcontracting with the City.

The Equal Opportunity/Equity Assurance Director shall establish project specific goals for each project or contract based upon the availability of small disadvantaged business enterprises (SDBE's) within the defined scope of work, delineated into percentages of the total value of the work.

Equal Business Opportunity Ordinance SDBE Participation Documentation

If applicable information is not submitted with your proposal, your proposal will be deemed non-responsive.

Declaration of Performance must be completed and submitted with your proposal.

SDBE Participation Documentation must be used to document participation of Small Disadvantaged Business Enterprise (SDBE) on Professional Services projects. All SDBEs must be certified by the City of Durham's Equal Opportunity/Equity Assurance Department prior to submission date. If a business listed has not been certified, the amount of participation will be reduced from the total utilization.

Managerial Profile must be used to list the managerial persons in your workforce who will be participating in this project.

Equal Employment Opportunity Statement for your company must be completed and submitted with your proposal.

Employee Breakdown must be completed and submitted for the location providing the service/commodity. If the parent company will be involved in providing the service/commodity on the City contract, a consolidated employment breakdown must be submitted.

Letter of Intent to Perform as a Sub-consultant/Subcontractor must be completed for SDBEs proposed to perform on a contract. This form must be submitted with the proposal.

Post Proposal Submission SDBE Deviation

Post proposal submission SDBE deviation participation documentation must be used to report and deviation from SDBE participation either prior to or subsequent to startup of the project. The Equal Opportunity/Equity Assurance Department must be notified if the proposed sub-consultant/subcontractor is unable to perform and for what reasons. Substitutions of sub-consultants/subcontractor, both prior to and after awarding of a contract, are subject to City approval.

SDBE Goals Not Met/Documentation of Good Faith Efforts

It is the responsibility of consultants/contractors to make good faith efforts. Good Faith Efforts means the sum total of efforts by a particular business to provide equitable participation of socially and economically disadvantaged employees and sub-consultants/subcontractors.

Whenever contract alternatives, amendments or extra work orders are made individually or in the aggregate, which increase the total value of the original contract, the consultant must make a good faith effort to increase SDBE participation such that the amounts subcontracted are consistent with the established goals.

SELECTION OF CONSULTANTS/CONTRACTORS FOR ARCHITECTURAL/ENGINEERING AND OTHER PROFESSIONAL SERVICES

Goal

The purpose is to provide Small Disadvantaged Businesses equal opportunities for participation on City of Durham contracts.

Definition of the Scope of the Selection Policy

The Equal Opportunity/Equity Assurance Director shall establish SDBE participation goals for each contract to be awarded by the City. Project specific goals for each project or contract will be based upon the availability of small disadvantaged business enterprises (SDBE's) within the defined scope of work, delineated into percentages of the total value of the work.

Small Disadvantaged Business Proposal Requirements

The prime consultant/contractor shall submit a proposal in accordance with the City of Durham's Request for Proposal. In addition, the prime consultant/contractor must submit all required Professional Services SDBE Forms.

Selection Committee for Professional Services

A selection committee shall be established to be composed of the following: City Manager or a designated representative of this office; Director of Finance or a designated representative of this office; department head responsible for the project; City Engineer if engineering services are involved; the Equal Opportunity/Equity Assurance Director and Purchasing Manager. Other representatives shall be called upon as needed based on their areas of expertise.

The committee shall screen the proposals based on the following criteria:

1. Firms; interest in the project;
2. Current work in progress by firm;
3. Past experience with similar projects;
4. General proposal for carrying out the required work;
5. Designation of key personnel who will handle the project, with resume for each;
6. Proposed associate consultants/contractor, SDBE subconsultants;
7. Indication of capability for handling project;
8. Familiarity with the project;
9. Fees that have been charged for recent comparable projects;
10. References;
11. SDBE Participation; and
12. Documentation of Good Faith efforts.

After ranking the firms presenting proposals based on the above criteria, interviews will be conducted by the selection committee with the top ranked firms (3-5). The contracting department will make the final recommendation, prepare contracts for review by the City Attorney, and prepare the recommendation for the City Council including the following:

1. Description and scope of the project;
2. Recommended firm;
3. Contract cost;
4. Time limits;
5. Basis for selection;
6. Source for funding;
7. Equal Business Opportunity Ordinance compliance; and
8. Recommendation that the contract be approved by the City Council.

Contract Award

A provision must be written in each contract with an architect or engineer requiring them to work with Equal Opportunity/Equity Assurance Department in creating and identifying separate work.

Project Evaluation

An evaluation shall be made of each contract after its completion to be used in consideration of future professional services contracts. The evaluation shall cover appropriate items from the check list for ranking applicants. A copy of the evaluation shall be given to the consultant, and any comment he/she cares to make shall be included in the files.

DECLARATION OF PERFORMANCE BY CONSULTANT/CONTRACTOR

Briefly address each of the following items:

1. A brief synopsis of the company and the products/services it provides:

2. Describe the normal procedure used on a bid of this type, giving the flow of purchase from the company to the ultimate purchaser:

3. List anyone outside of your company with whom you will contract on this bid:

The undersigned consultant/contractor certifies that: (check appropriate box)

- a) _____ It is the normal business practice of the consultant/contractor to perform all elements of the contract with its own workforce without the use of subcontractors/vendors; and
- b) _____ That the above documentation demonstrates this *firm's* capabilities to perform all elements of the contract with its own work force or without the use of subcontractors/vendors.
- c) _____ The vendor/contractor will use a subconsultant(s) in the fulfillment of this scope of work.

Date

Authorized Signature

**PARTICIPATION DOCUMENTATION
(TO BE COMPLETED BY PRIME CONSULTANT/CONTRACTOR ONLY)**

Names of all firms (including prime and sub consultants/ Sub contractors)	Location	SDBE Firm Yes/No	Nature of Participation	% of Project Work

TOTAL: _____

Name - Authorized Officer of Prime Consultant/Contractor Firm (Print/Type)

Signature - Authorized Officer of Prime Consultant/Contractor Firm

Date

MANAGERIAL PROFILE

Name of Firm: _____

Contact Person: _____

Title: _____

Address: _____

Telephone No.: _____

Date: _____

List the managerial persons in your work force who will be participating in this project, including name, position, and whether the individuals are minority or woman within the definition* of the City of Durham's Equal Business Opportunity Ordinance.

Managerial Employees

NAME	POSITION	SOCIALLY/ECONOMICALLY DISADVANTAGED* (YES/NO)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

* M-Minority (African American), W-Woman, Other-H-Hispanic, AI-American Indian, AS-Asian American, Handicapped

EQUAL OPPORTUNITY STATEMENT

(You may submit your organization's EEO policy in lieu of this sheet)

EMPLOYEE BREAKDOWN

Part A – Employee Statistics for the Primary Location

MALES

FEMALES

Employment Category	Total Employees	Total Males	Total Females	White	Black	Hispanic	Asian or Alaskan Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project Manger													
Professional													
Labor													
Clerical													
Totals													

Part B – Employee Statistics for the Consolidated Company (*See instructions for this form on whether this part is required.*)

MALES

FEMALES

Employment Category	Total Employees	Total Males	Total Females	White	Black	Hispanic	Asian or Alaskan Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project Manger													
Professional													
Labor													
Clerical													
Totals													

EEO-1 Report may be submitted in lieu of this form

Letter of Intent to Perform as a Sub-Consultant

The undersigned intends to perform work in connection with the above project as a SDBE:

Minority (African American)

Woman

Hispanic

American Indian

Asian American

Handicapped

The SDBE status of the undersigned is certified by the City of Durham as identified by the attached copy of certification or the attached SDBE Contractor Identification List supplied by the EO/EA Department.

The undersigned is prepared to perform the following described work in connection with the above project (specify in detail particular work items or parts thereof to be performed):

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

<u>ITEMS</u>	<u>PROJECTED COMMENCEMENT DATE</u>	<u>PROJECTED COMPLETION DATE</u>

The undersigned will subcontract _____% of the dollar value of this contract to a SDBE subconsultant/subcontractor and/or non-SDBE subconsultant/subcontractor.

The undersigned will enter into a formal agreement in the amount of \$_____ for the above work with you, conditioned upon your execution of a contract with the City of Durham.

Name _____ Title _____

Company _____ Telephone _____

Address _____

Signature _____

REQUEST TO CHANGE SDBE PARTICIPATION

Project: _____

Name of bidder or consultant: _____

Name and title of representative bidder or consultant: _____

Address (including zip code): _____

Telephone number: _____ Fax number: _____

Email address: _____

Total amount of original contract, before any change orders or amendments: _____

Total amount of the contract, including all approved change orders and amendments to date, but not counting the changes proposed in this form: _____

Dollar amount of changes proposed in this form: _____

The proposed change (*check one*) ☐ **increases** ☐ **decreases** the dollar amount of the bidder's/consultant's contract with the City.

Does the proposed change decrease the SDBE participation? (*check one*) ☐ **yes** ☐ **no**

If the answer is **yes**, complete the following:

BOX A. For the subcontract proposed to be changed (increased, reduced, or eliminated):

Name of subconsultant: _____

Goods and services to be provided before this proposed change: _____

Is it proposed to eliminate this subcontract? ☐ yes ☐ no

If the subcontract is to be increased or reduced, describe the nature of the change (*such as adding \$5,000 in environmental work and deleting \$7,000 in architectural*):

Dollar amount of this subcontract before this proposed change: _____

Dollar amount of this subcontract after this proposed change: _____

This subconsultant is (*check one*):

☐ 1. City-certified Black-owned SDBE

- ☐ 2. City-certified Women-owned SDBE
☐ 3. City-certified SDBE that is neither Black-owned nor women owned, but to be credited as:
3(a) ☐ Black-owned SDBE 3(b) ☐ Women-owned SDBE
☐ 4. not a City-certified SDBE

BOX B. Proposed subcontracts other than the subcontract described in Box A above

Name of subcontractor for the new work:

Goods and services to be provided by this proposed subcontract:

—

Dollar amount proposed of this proposed subcontract:

This subcontractor is (*check one*):

- ☐ 1. City-certified Black-owned SDBE
☐ 2. City-certified women-owned SDBE
☐ 3. City-certified SDBE that is neither Black-owned nor women owned, but to be credited as:
3(a) ☐ Black-owned SDBE 3(b) ☐ Women-owned SDBE
☐ 4. not a City-certified SDBE

Add additional sheets as necessary.

SDBE GOALS NOT HAVING BEEN MET. The following information must be presented by the consultant concerning good faith efforts taken.

It is the responsibility of consultants to make good faith efforts. Any act or omission by the City shall not relieve them of this responsibility. For future efforts, it shall be comprised of such efforts which are proposed to allow equitable participation of socially and economically disadvantaged employees and sub-consultants/subcontractors. The City Manager shall apply the following criteria, with due consideration of the quality, quantity, intensity and timeliness of efforts of consultants/contractors, in determining good faith efforts to engage SDBEs along with other criteria that the City Manager deems proper:

Name _____ of _____ Bidder: _____

*If you find it helpful, feel free to attach pages to explain your answers. **How many pages is your firm attaching to this questionnaire?** _____ (Don't count the 2 pages of this questionnaire.)*

If a yes or no answer is not appropriate, please explain the facts. All of the answers to these questions relate only to the time before your firm submitted its bid or proposal to the City. In other words, actions that your firm took after it submitted the bid or proposal to the City cannot be mentioned or used in any answers.

1. SOLICITING SDBEs.

(a) Did your firm solicit, through all reasonable and available means, the interest of all SDBEs certified (that is, in the City's database) in the scopes of work of the contract? ☐ **yes**
☐ **no**

(b) In such soliciting, did your firm advertise? ☐ **yes** ☐ **no** Are you attaching copies to this questionnaire, indicating the dates and names of newspaper or other publication for each ad if that information is not already on the ads? ☐ **yes** ☐ **no**

(c) In such soliciting, did your firm send written (including electronic) notices or letters? Are you attaching one or more sample notices or letters? ☐ **yes** ☐ **no**

(d) Did your firm attend the pre-bid conference? ☐ **yes** ☐ **no**

(e) Did your firm provide interested SDBEs with timely, adequate information about the plans, specifications, and requirements of the contract? ☐ **yes** ☐ **no**

(f) Did your firm follow up with SDBEs that showed interest? ☐ **yes** ☐ **no**

(g) With reference to the SDBEs that your firm notified of the type of work to be subcontracted --

Did your firm tell them:

- (i) the specific work your firm was considering for subcontracting? ☐ **yes** ☐ **no**
- (ii) that their interest in the contract is being solicited? ☐ **yes** ☐ **no**
- (iii) how to obtain and inspect the applicable plans and specifications and descriptions of items to be purchased? ☐ **yes** ☐ **no**

2. BREAKING DOWN THE WORK.

(a) Did your firm select portions of the work to be performed by SDBEs in order to increase the likelihood that the goals would be reached? ☐ **yes** ☐ **no**

(b) If **yes**, please describe the portions selected.

ANSWER:

3. NEGOTIATION.

In your answers to 3, you may omit information regarding SDBEs for which you are providing Form E-105.

(a) What are the names, addresses, and telephone numbers of SDBEs that you contacted?

ANSWER:

(b) Describe the information that you provided to the SDBEs regarding the plans and specifications for the work selected for potential subcontracting.

ANSWER:

(c) Why could your firm not reach agreements with the SDBEs that your firm made contact with? Be specific.

ANSWER:

4. ASSISTANCE TO SDBEs ON BONDING, CREDIT, AND INSURANCE.

(a) Did your firm or the City require any subcontractors to have bonds, lines of credit, or insurance? ☐ **yes** ☐ **no**

(Note: In most projects, the City has no such requirement for *subcontractors*.)

(b) If the answer to (a) is **yes**, did your firm make efforts to assist SDBEs to obtain bonds, lines of credit, or insurance? ☐ **yes** ☐ **no** If **yes**, describe your firm's efforts.

ANSWER:

(c) Did your firm provide alternatives to bonding or insurance for potential subcontractors?

☐ **yes** ☐ **no** If **yes**, describe.

ANSWER:

5. GOODS AND SERVICES. What efforts did your firm make to help interested SDBEs to obtain goods or services relevant to the proposed subcontracting work?

ANSWER:

6. USING OTHER SERVICES.

(a) Did your firm use the services of the City to help solicit SDBEs for the work?

☐ **yes** ☐ **no** Please explain.

ANSWER:

(b) Did your firm use the services of available minority/women community organizations, minority and women contractors' groups, government-sponsored minority/women business assistance agencies, and other appropriate organizations to help solicit SDBEs for the work?

☐ **yes** ☐ **no** Please explain.

ANSWER:

Appendix B

Appendix B –Sample Contract

CONTRACT FOR *[descriptive title to be inserted]*

This contract is dated, made, and entered into as of the _____ day of _____, 20_____, by the City of Durham ("City") and *[name of firm]* ("Contractor"), *[Indicate type of entity, for instance:*

a corporation organized and existing under the laws of [name of State];
a limited liability company organized and existing under the laws of [name of State];
a professional corporation organized and existing under the laws of [name of State];
a professional association organized and existing under the laws of [name of State];
a limited partnership organized under the laws of [name of State];
a sole proprietorship;
or a general partnership].

Sec. 1. Background and Purpose.

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor's. The Contractor shall *[state the services to be provided and the schedule for those services.]*. In this contract, "Work" means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor's duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Sec. 3. Reserved.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Contractor's Billings to City. Compensation. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. *[City staff - Add any special requirements or detail needed in the invoices.]* Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The City shall pay the Contractor for the Work as follows: *[City staff - Describe the timing of payments, how amounts are calculated, etc. List the kinds of expenses, if any, that the City will reimburse.]*. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

Sec. 6. Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, titled "Prompt Payment to Subcontractors," he or she will be referred to as the "Project Manager") determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be

- (i) the amount of interest due to the Subcontractor under subsection (a), and/or
- (ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

(c) Nothing in this section (titled "Prompt Payment to Subcontractors") shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely

payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 7. Insurance. [*Consult Risk Management*.]

Sec. 8. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule referred to in section 2 above, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 9. Exhibits. The following exhibits are made a part of this contract:

Exhibit A [*Insert title of exhibit*] containing [*insert number*] page(s).

Exhibit B [*Insert title of exhibit*] containing [*insert number*] page(s).

In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 10. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

Mike Barros, Director
Department of Community Development
City of Durham
101 City Hall Plaza
Durham, NC 27701-3329
The fax number is (919)_____.
Email:

To the Contractor:

[*Insert name and address*]

The fax number is _____.
Email:

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees,

excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 12. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment. Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows:
(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in

conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(j) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(k) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(l) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(m) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

Sec. 13. Termination for Convenience ("TFC"). (a) *Procedure*. Without limiting any party's right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations*. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment*. The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding

profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 14. Trade Secrets; Confidentiality. The request for proposals (RFP) section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract (including all of the Contractor's responses to the RFP). This section (titled "Trade Secrets; Confidentiality") shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. For purposes of this contract, the word "candidate" in the RFP section just cited shall mean the "Contractor."

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

Attest:

(Business Name)

Secretary
(Affix Corporate Seal)

(Business Representative name)
(Title)

Attest:

CITY OF DURHAM

City Clerk

Pre Audit Certificate